Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition For Emergency Relief Of The California Public Utilities Commission's Decision To Implement An All-Services Area Code Overlay In the 310 Area Code	)	CC Docket No. 99-200

COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION

Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[1] the California Cable & Telecommunications Association ("CCTA")[2] comments on the "Petition for Emergency Relief" submitted by the South Bay Cities Council of Governments ("SBCCOG"), The Telephone Connection of Los Angeles, Inc., and the Telephone Connection Local Services, LLC (together, "Petitioners") filed November 22, 2005 ("Petition"). Petitioners seek an order to immediately stay implementation of the California Public Utilities Commission's ("CPUC") 310 NPA Overlay Decision[3] while the FCC reviews the CPUC's compliance with federal

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1 *See* 47 C.F.R. §§ 1.415 &1.119.

2 CCTA, an industry association of California cable service providers, is the largest state cable telecommunications association in the country. Its members include more than 250 cable television systems serving 1,350 communities, providing service to almost eight million California homes.

3 CPUC Decision 05-08-040 (rel. August 25, 2005).

numbering rules and guidelines.[4] Petitioners also seek a declaratory ruling that the CPUC's Overlay Decision is not in compliance with those rules and guidelines as they relate to dialing parity.[5]

Summary

CCTA urges the Commission to deny Petitioner's request for a stay of the CPUC's Overlay Decision. CCTA can appreciate Petitioners' concerns about dialing parity, however, the principle of dialing parity will be meaningless if CLECs have no telephone numbers to offer potential customers in the 310 NPA. As explained below, the 310 NPA is presently at exhaust, and the trickle of numbers that remain will not last until the new area code is opened. A stay would only prolong a voice service provider's ability to obtain number resources, harming not only voice providers in the 310 NPA, but also those consumers of voice services who are still awaiting patiently the promise of competition offered by the Telecommunications Act of 1996 (the "1996 Act").[6]

Moreover, Petitioner's request for a stay of the CPUC's Overlay Decision does not meet the applicable standard for assessing whether a stay is warranted.[7] As described below, the requested stay is not justified because: (1)

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4 Petition at 1.

5 *Id.*

6 Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified in part at and amending the Communications Act of 1934, 47 U.S.C. §§ 151, et seq.

7 *See* Petition at 4, citing *Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977), and *Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

a stay would "substantially harm" CCTA members and the public; (2) Petitioners have not sufficiently demonstrated that they or the public will suffer "irreparable injury"; (3) the Petitioners have not established that they will succeed on the merits; and (4) equities and the public interest favor rejecting the stay request.

A Stay would "Substantially Harm" CCTA Members and the Public

Petitioners assert that their request meets the applicable standards for granting a stay, claiming that "little if any harm will befall other interested Persons."[8] Contrary to Petitioner's claim, a stay would substantially harm CCTA's members and the public. CCTA member companies, including Comcast, Cox, Time Warner Cable, and Charter Communications, serve portions of the 310 NPA. Using at-risk capital, cable companies have made the substantial financial investment necessary to roll out voice and other services to Californians. In 2005 alone, the California cable industry's infrastructure expenditures have amounted to an estimated ***one billion dollars***.[9] That figure is in addition to the cable industry's more than ***ten billion dollars*** in infrastructure expenditures in California made between 1996 and 2004. [10] A lack of numbering resources denies cable companies entry into, and expansion within, the wireline voice market.

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[8] Petition at 10.

[9] California-specific estimate based on Cable Industry Facility Upgrade Expenditures, NCTA 2005, Year-End Industry Review, available at http://www.ncta.com/Docs/PageContent.cfm?pageID=314.

[10] *Id.*

A stay would ensure that numbering resources will be unavailable to voice providers in the 310 NPA. The Commission is well aware that there are insufficient numbering resources in the 310 NPA to accommodate new and existing voice service providers. The North American Numbering Plan Administrator's (NANPA) most recent exhaust analysis shows the 310 area code is already at exhaust – that is, there are no more NXX codes available for assignment to voice service providers.[11] While a single code has been set aside for pooling, that code cannot provide sufficient numbers to serve the 310 NPA's sixteen rate centers.[12] Consequently, some rate centers have no blocks available for pooling purposes and no foreseeable prospect for replenishment, absent a new area code.[13] Thus, a stay and the consequent failure to provide area code relief would effectively deny facilities-based providers the ability to offer voice services to business and residential customers in the 310 NPA.

Denial of competitive choice due to a lack of telephone numbers substantially harms the public and thwarts two of the 1996 Act's primary purposes – namely, engendering facilities-based competition and ensuring competitive entry in residential markets. The Commission previously recognized how the lack of numbers in the 310 NPA could frustrate the purpose of the 1996

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11 *See* http://www.nanpa.com/pdf/NRUF/October_2005_NPA_Exhaust_Analysis.pdf

12 *See* NANPA's November 2005 activity report, available at http://www.nanpa.com/nanp1/ActivityNov2005.xls

13 *See* https://www.nationalpooling.com/pas/control/pooltrackingreport

Act when it granted California authority to implement various code conservation measures for the 310 NPA.[14] The Commission insisted that such an outcome would not be tolerated:

> Under **no circumstances** should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.[15]

Accordingly, a stay would make this bad situation worse for both voice service providers, who have invested in the promise of competition, and the public, who hope to benefit from that promise.

Petitioners Have Not Sufficiently Demonstrated "Irreparable Injury"

Petitioners assert that they and the public will experience irreparable injury if their requested stay is denied. Specifically, Petitioners claim that small competitive carriers like TCLA will be harmed because they will be required to expend significant funds in public education material under the CPUC's current public education plan for the overlay.[16]

CCTA disagrees that the prospect of further public education by carriers in the 310 NPA substantiates a Commission finding that "injury is certain and

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14 *In the Matter of California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures,* CC Dkt No. 96-98, *Order,* ¶ 8, rel. Sept. 15, 1999 (hereinafter, "FCC Order").

15 *Id.* at ¶ 9 (emphasis added).

16 Petition at 9-10.

great," as required by the applicable test.[17] Assuming the Commission were to find the CPUC's plan is inconsistent with federal law, the Commission's finding would not render the initial education campaign wasteful. The key messages contained in the CPUC's education effort – namely, that (1) the 310 NPA will soon have a second area code in the same geographic area and (2) an area code must be dialed for all calls within the 310 geographic area – would remain necessary.

Petitioners likewise claim that constituents of the SBCCOG will be harmed because there will be significant consumer confusion if the public education campaign starts and then is later changed due to a decision adverse to the CPUC.[18] CCTA is likewise mindful that changes to education efforts in midstream have the potential to create public confusion. However, the public education process Petitioners seek to suspend effectively began with the issuance of the CPUC's Decision on August 25, 2005. Since that time, the CPUC, the California press, and service providers have informed the public of the pending change and consequent requirements. Thus, a stay creates the potential to engender, rather than mitigate, customer confusion.

Finally, Petitioners claim that the disparity in dialing will hurt visually disabled callers and others who rely on *69 and other automatic callback features because calls from wireless phones will not transfer the "1" with the call. This issue, however, cannot be avoided by the requested stay. The dialing

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[17] Petition at 9, citing *Wisconsin Gas v. FERC*, 758 F. 2nd 669, 674 (DC Cir. 1985)

[18] Petition at 10.

inconsistency between wireless dialing protocol (where only a ten-digit number is transmitted) and wireline dialing protocol (where an eleven-digit number is transmitted) already exists throughout California. The CPUC appears ready to examine this California-specific protocol matter in a global fashion through the comment process set forth in its Decision 05-12-047 and should be permitted to do so before the Commission considers exercising draconian measures, such as staying area code relief in the 310 NPA, as urged by Petitioners.

Petitioners Have Not Established That They Will Succeed On The Merits

Petitioners assert that they will succeed on the merits because "the FCC has already considered and rejected a proposal to adopt 1+10 digit dialing for local numbers" and because the "CPUC's actions create a dialing disparity between wireless and wireline carriers."[19] CCTA respectfully disagrees with Petitioner's assessment. First, the authority cited by Petitioners in support of this claim chiefly addresses efforts by the states of New York and Pennsylvania to obtain Commission authority to preserve seven-digit dialing in an overlay scenario, which would be an unjust dialing disparity that the Commission has explained would deter competition.[20] New York and Pennsylvania did not argue the merits of 1+10 versus 10-digit dialing, as suggested by Petitioners.

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19 Petition at 5.

20 Petition at 3, citing Implementation of the *Local Competition Provision of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Second R&O & MO&O*, 11 FCC Rcd 19392 (1996), vacated in part sub nom., *People of the State of California v FCC*, 124 F.3d 934 (8th Cir. 1997), rev'd *AT&T Corp. V. Iowa Util. Bd*, 119 S.Ct. 721 (1999), recon. granted in part and denied in part, 14 FCC Rcd 17964 (1999) ("Third Reconsideration"). ¶ 40.

Petitioners correctly note that the Commission's *Third Reconsideration* decision rejected the suggestion to adopt mandatory 1+10 digit dialing for all numbers.[21] However, the Commission rejected that proposal to avoid confusion regarding the dialing of toll versus local calls, finding that the "public interest is well-served by a uniform dialing pattern, such as 10-digit dialing for all local calls and 1+10 digits for all long distance calls, which clearly differentiates between local and toll calls."[22]

The Commission's rationale in the *Third Reconsideration* is inapplicable in California where, unlike in many other states, the "1" is not a toll indicator. Thus, the Commission's consideration of 1+10-digit dialing in the context of toll versus local calls does not provide definitive guidance for the matter at hand, because California customers associate the dialing of the prefix "1" as coinciding with dialing another area code and not making a toll call.

Equities and the Public Interest Favor Rejecting the Stay Request

Petitioners assert that equities and the public interest favor a stay, claiming that if the CPUC is permitted to disregard FCC rules, this would, in essence, signal to states that they can go their own way.[23] This, Petitioners claim, would be "particularly inequitable to states like Pennsylvania and New

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[21] Third Reconsideration at ¶ 39

[22] Third Reconsideration at ¶ 39.

[23] Petition at 11

York that have been stopped from implementing area code overlays contrary to the FCC's '10-digit mandate'."[24]

CCTA disagrees that declining to stay the CPUC Decision would be inequitable to Pennsylvania and New York. As noted above, New York and Pennsylvania sought a waiver of the Commission's rules in order to preserve 7-digit dialing within an overlay, which is not implicated in the instant matter. Moreover, the CPUC has in fact taken into account the Commission's number parity rules. In its recent Decision 05-12-047, released December 15, 2005, the CPUC solicited an additional round of comments as to whether changes in the state dialing pattern should be modified for any subsequent, proposed area code overlay in California.[25] Thus, the CPUC has not dismissed the issue, but has instead sought a state-wide solution to potential dialing disparity. If the CPUC addresses the 1+10-digit dialing issue in a manner inconsistent with Commission rules, then aggrieved parties can seek redress with the Commission at that time.

In contrast to the Petitioners, CCTA believes the equities and the public interest require the Commission to reject the Petitioners' stay request. As described above, a stay would further exacerbate an already desperate situation in the 310 area code. The Commission has recognized that easing access to the NANP resources is necessary to promote broadband deployment. For example, in the Commission's Order granting SBCIS authority to obtain numbering resources directly from the NANPA and or the pooling administrator, the

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[24] Petition at 11.

[25] D.05-12-047, mimeo at 13.

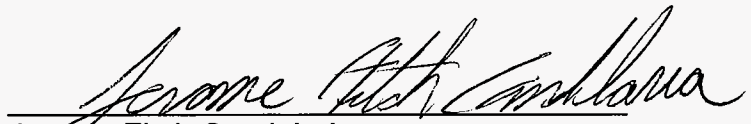
Commission stated that granting the petition "will help expedite the implementation of IP-enabled services that interconnect to the PSTN; and enable SBCIS to deploy innovative new services and encourage the rapid deployment of new technologies and advanced services that benefit American consumers."[26] Consistent with its *SBCIS Order*, the Commission should likewise promote competition, demand, and technology by allowing timely area code relief in the 310 NPA to go forward.

Conclusion

As described above, Petitioners have failed to meet the applicable standard for assessing whether a stay is warranted. Accordingly, CCTA urges the Commission to reject the Petition For Emergency Relief.

DATED: December 22, 2005

Respectfully submitted,



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26 *In re SBC Internet Services, Inc. Authority to Obtain Numbering Resources Directly From the NANPA and/or the Pooling Administrator*, CC Dkt. No. 99-200, Order at ¶ 8 (rel. Feb. 1, 2005)